

Policy Number: 16

Title: Human Subject Research/ Non-Human Subject Research Determination

Date of Last Revision: 06/16/08, 05/15/10, 06/01/10, 10/15/13, 01/28/15

Policy:

It is the policy of the UC Irvine (UCI) Institutional Review Board (IRB) to assist in determining whether an activity meets the definition of "Human Subject Research."

- I. **"Human Subject Research"/ "Non-Human Subject Research" determinations**
 - A. An investigator may request written determination that an activity represents "Non-Human Subject Research" if needed (e.g., funding, publication requirements).
 - B. The Human Research Protections (HRP) staff makes the determination of whether an activity constitutes Human Subject Research.
 - C. The HRP staff will verify whether an activity is "Human Subject Research" by considering whether the activity either:
 1. Meets the DHHS regulatory definitions of "research" that involves "humans subjects,"
 2. Meets the FDA regulatory definition of "clinical investigation,"
 3. Meets a DOD addendum definition of activities that involves "experimental subjects," or
 4. Is funded by the DOJ and conducted within the Bureau of Prisons. *If the activity is a pilot project designed for implementation of the Bureau's programmatic or operational initiatives, it is not considered to be research.*
 5. Is DOE funded or DOE laboratory managed and involves intentional modification of an individual's or a group of individuals' environment. For example, by installation of devices in homes and/or through the introduction of gases/ chemicals to trace airflow in occupied residential, commercial or public settings. Generalizable also includes studies in human occupied homes or offices that manipulate the environment to achieve research aims or test new materials. Further, collection of an occupants' views of appliances, materials or devices installed in their homes via survey would constitute "Human Subject Research."
 - a) Generalizable should be interpreted in terms of contributing to knowledge within the specific field of study.
 - D. Investigators may also make their own assessment utilizing the "Non-Human Subject Research Determination Form", available on the HRPP webpage as an administrative tool.
 - E. If the activity does not represent "Human Subjects Research" the activity does not require IRB approval and oversight.
- II. **Non-Research Activities**
 - A. Activities are not research if they do not involve a systematic approach involving a predetermined method or a plan for studying a specific topic, answering a specific question, testing a specific hypothesis, or developing theory. A systematic approach incorporates collection of data, either quantitative or qualitative, or specimens; and analysis.
 1. Examples of activities that would not normally be considered systematic investigations include, but are not limited to:

- a. Training activities (e.g., individuals being trained to perform a certain technique or therapy such as art therapy, psychoanalysis, oral history techniques); and
- b. Classroom activities involving human participants or human participant data where the objective of the activity is to teach proficiency in performing certain tasks or using specific tools or methods.
- c. Case reports or case series of three or less individuals.
- 2. Examples of systematic investigations include, but are not limited to:
 - a. Observational studies;
 - b. Interviews (including those that are open-ended) or survey studies;
 - c. Group comparison studies;
 - d. Test development;
 - e. Program evaluation; or
 - f. Clinical investigations.
- B. Activities are not research if they do not intend to contribute to generalizable knowledge or to draw general conclusions (i.e., knowledge gained from a study may be applied to populations beyond the specific study population), inform policy, or generalize findings.
 - 1. Examples of activities that are typically not generalizable include:
 - a. Biographies and service or course evaluations, unless they can be generalized to other individuals;
 - b. Oral history activities in general which are solely designed to create a record of specific historic events;
 - c. Data collection for internal department, school, or other University administrative purposes (e.g., teaching evaluations, "customer service" surveys);
 - d. Classroom activities designed specifically for education or teaching purposes, where the data is collected from and about human subjects a part of a class exercise or assignment that is not intended for use outside of the classroom;
 - e. Quality Improvement activities designed to continuously improve the quality or performance of a department or program or health care; and
 - f. A Case Report or a write up of up to three patients. The Case Report or write up must specifically describe medical care (i.e., not research related care) and outcomes from treatment provided solely as part of the patient's clinical care.
 - 2. Thesis or dissertation projects conducted to meet the requirements of a graduate degree are usually considered generalizable and therefore, require IRB review and approval.

III. Non-Human Subject

- A. Activities do not involve humans as participants if they do not involve the process of obtaining specimens or data through intervention or interaction with individual participants or identifiable private information.
- B. Examples of activities that would not normally involve human subjects if the research is about things or expertise, rather than "about whom" (i.e., questions are not about the individual providing the information).
- C. Information is considered "not identifiable" if it does not include the following:
 - 1. Name;
 - 2. Any geographic subdivisions smaller than a state, including street address, city, country, precinct, ZIP code, and their equivalent geocodes, except for the initial three digits of a ZIP code;
 - 3. All elements of dates (except year) directly related to an individual (e.g., date of birth, admission);
 - 4. Telephone numbers;
 - 5. Fax numbers;

6. Electronic mail addresses;
 7. Social security numbers;
 8. Medical record numbers;
 9. Health plan beneficiary numbers;
 10. Account numbers;
 11. Certificate/license numbers;
 12. Vehicle identifiers and serial numbers, including license plate numbers;
 13. Device identifiers and serial numbers;
 14. Web Universal Resource Locators (URLs);
 15. Internet Protocol (IP) address numbers;
 16. Biometric identifiers, including finger and voiceprints;
 17. Full-face photographic images and any comparable images; and
 18. Any other unique identifying number, characteristic, or code.
- D. Specimens/data that are received by the Investigator as de-identified (i.e., stripped of all HIPAA identifiers as noted above).
- E. When the Investigator receives private information or specimens with no code or link that would allow an Investigator to establish identity, this would not involve human subjects. For example, a publicly available, unidentifiable, non-linked dataset qualifies as not involving human subjects.
- F. The Investigator may receive coded private information or specimens and qualify for non-human subject if the following conditions are met:
1. The code is not derived or related to the HIPAA identifiers that must be stripped from the PHI (e.g., patient MR# + last 4 digits of individuals Social Security Number);
 2. The private information or specimens were not collected specifically for the currently proposed research project through an interaction or intervention with living individuals; **and**
 3. The Investigator cannot readily ascertain the identity of the individuals to whom the coded private information or specimens pertain, because:
 - a. The key to decipher the code is destroyed before the research begins;
 - b. The Investigator and the holder of the key enter into an agreement prohibiting the release of the key to the Investigator under any circumstances, until the individuals are deceased;
 - c. The private information is received from an IRB-approved repository or data management center that includes written operating procedures that prohibit the release of the key to the Investigator under any circumstances, until the individuals are deceased; or
 - d. There are other legal requirements prohibiting the release of the key to the Investigator until the individuals are deceased.
- G. An activity only involving analysis of a Limited Data Set (LDS) (a set of data that lacks 16 of the 18 identifiers itemized by the privacy rule) provided by a third party would not involve human subjects. A LDS may contain dates and certain geographic information associated with an individual that would be absent of identifiable information. Information provided by a third party may include the following:
- a. 5-digit zip code (4 digit extension is not allowed)
 - b. Full dates of birth or death
 - c. Full date(s) of service (admission and discharge)
 - d. Geographic subdivision (other than street address)
- H. A cadaver is not considered to be a human subject.
- I. Notable exception to non-human subject: IVD device studies using human tissue specimens while exempt from most provisions of 21 CFR part 812(c)(3), qualify as clinical

investigations and are therefore subject to FDA 21 CFR parts 50 and 56, even if the clinical investigation involves de-identified, leftover tissue specimens.

IV. Modifications

Changes that might disqualify the activity from its "Non-Human Subject Research" status should be reported to the IRB for review and verification prior to implementation.

V. All "Non-Human Subject Research" is subject to applicable institutional policies and procedures.

References:

45 CFR 46

21 CFR 50

21 CFR 56

21 CFR 812

32 CFR 219 (DoD)

28 CFR 512 (DOJ)

DoD Directive 3216.2 E2.1.1

OHRP Guidance on Research Involving Coded Private Information or Biological Specimens,
August 10, 2004

[DOE Memo dated April 25, 2013](#)

<http://humansubjects.energy.gov/FAQ/DOExpectations.htm>

Procedure Number: 16.A

Title: Procedure Human Subject Research/Non-Human Subject Research Determination

Procedure:

This procedure provides guidance for the determination of non-human subject or non-research projects.

I. Investigator Responsibilities

- A. Investigators should review the "Non-Human Subject Research Determination Form." The form and corresponding instructions are located on the HRPP website at <http://www.research.uci.edu/compliance/human-research-protections/docs/Request-Determination-Non-Human-Subjects.doc> and http://www.research.uci.edu/forms/docs/irb-forms/3_RequestDeterminationNon-HumanSubjects.doc
- B. Investigators may also seek HRP staff guidance about whether a proposed activity constitutes "Human Subjects Research." Written confirmation of whether an activity qualifies as non human subject research may be provided by HRP staff upon the Investigator's completion and submission of the "Non-Human Subject Research Determination Form."
- C. Investigators must reply to HRP staff or IRB requests for revisions and/or clarifications regarding a submission of the "Non-Human Subject Research Determination Form." It is the Investigator's responsibility to maintain the e-mail documentation.
- D. Investigators must inform the HRP staff or the IRB of any proposed changes might disqualify an activity from its "Non-Human Subject Research" status.

II. IRB Committee Responsibilities

The IRB Chair or his/her Designee will be available to assist the HRP staff in determining whether an activity meets the definition of "Human Subject Research" as applicable.

III. HRP Staff

- A. HRP Staff will consider the proposed activity to determine if the activity qualifies as "Non-Human Subject Research" in accordance with "IRB Policy 16, Human Subject Research/Non-Human Subject Research Determinations."
- C. HRP staff will utilize the "Determining Whether a Proposed Activity is Human Research According to DHHS, FDA, or Other Regulatory Definitions" checklist for guidance when determining if the research qualifies as "Non-Human Subject Research."
- B. Written confirmation of whether an activity qualifies as "Non-Human Subject Research" may be provided by HRP staff upon the Investigator's completion and submission of the "Non-Human Subject Research Determination Form."
- C. The HRP staff may:
 - 1. Determine that the activity does not constitute human subject research.
 - 2. Request clarifications to the submitted documents in order to determine if the activity constitutes non-human subject research;
 - 3. Request the assistance of the IRB Chair or designee to make a determination; or
 - 4. Determine that the activity does constitute human subjects research and explain to the Investigator that IRB approval is required prior to the initiation of the research.
- D. HRP staff will document the determination and its justification on the "Non-Human Subject Research Determination Form." Staff will mark the appropriate box on the form, sign the form, copy and send the original form back to the investigator (email, fax or campus mail are acceptable).

- E. HRP staff will also file the copy in an electronic folder by the requesting Investigator's last name.
- F. If the HRP staff determines that the activity constitutes human subjects research, the HRP staff, in consultation with the IRB Chair or designee, as necessary, will determine the appropriate level of review; communicate this information to the Investigator; and provide guidance as needed.